IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WP(C).No. 22733 of 2007(F)

PETITIONER:

A.A. AZAD, S/O. ABDUL AZEEZ,
AZAD MANZIL, OYOOR (P.O), KOLLAM DISTRICT.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.A.G.GIRISH KUMAR
SRI.RAJAN VELLOTH

RESPONDENTS:
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1. KERALA FINANCIAL CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR,
HEAD OFFICE, TRIVANDRUM.

2. THE CHIEF MANAGER,
KERALA FINANCIAL CORPORATION, BRANCH OFFICE,
A.G.C. COMPLEX, BEACH ROAD, KOLLAM-691 001.

3. THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
KERALA FINANCIAL CORPORATION, KOLLAM.

BY SC SRI.A.A. ABUL HASSAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 22733 OF 2007

Dated this the 26th day of July, 2007

JUDGMENT

Petitioner availed a loan of Rs. 50 lakhs in 2000 to construct a hospital building. Even though loan period is over, arrears are not paid. On account of chronic default, recovery steps were taken including steps under Section 29 of the State Financial Corporations Act to take over the assets. This Court vide Ext.P1 judgment dated 1.7.2005 directed payment of 10 per cent for considering OTS benefit by the first respondent. However, petitioner did not remit the same and filed another Writ Petition, which was dismissed by this Court vide Ext.P2. Thereafter petitioner paid 10% of the arrears due as on 13.12.2006 which is evident from Ext.P4 receipt produced in court. Standing counsel for KFC submitted that petitioner has offered Rs. 65 lakhs for settlement of liability which was unacceptable to the Corporation. Counsel for the petitioner submitted that petitioner is entitled to lower rate of interest based on RBI guidelines. It is not known whether RBI guidelines apply to non-banking financial

institutions like the first respondent. Petitioner has also relied on the guidelines issued by KFC for settlement. If guidelines are issued by KFC, the same should be followed for settlement of liability of similarly placed borrowers. Sacrifice under settlement has to be necessarily based on time frame within which liability exclusive of incentives is settled by the borrower. Therefore it is mandatory for the petitioner to offer time frame for full payment for the Corporation to make sacrifice in the form of waiver or reduction of penal interest, default interest, etc. It is for the petitioner to mention last date within which full payment will be made and depending upon the offer by the petitioner, first respondent should grant incentive based on guidelines. If payment is not offered within a reasonable time, respondents are not bound to give any incentive and they are free to proceed for recovery. W.P. is accordingly disposed of directing the respondents to withhold recovery proceedings including the take over under Section 29 of the SFC Act till 31.10.2007 provided within two weeks from the date of receipt of a copy of this judgment, petitioner will file an undertaking before the second respondent that liability will be cleared on or before

31.10.2007. If petitioner fails to give undertaking then respondents can proceed to take over the property and recover the arrears after two weeks from the date of receipt of a copy of this judgment. Incentives should be granted based on norms followed by KFC. Even if there is no OTS scheme, I direct the respondents to waive complete penal interest, if full arrears with agreed rate of interest are paid before 31.10.2007. If undertaking is given as above, and is violated, there will be direction to the petitioner to hand over possession of the properties to KFC after 31.10.2007, failing which KFC can dispossess the petitioner with police assistance and move this Court for initiating contempt against petitioner.

(C.N.RAMACHANDRAN NAIR)
Judge